

Kusan Manufacturing Company, a Division of Kusan, Inc. and District Lodge 155 of the International Association of Machinists and Aerospace Workers, AFL-CIO. Case 26-CA-8474

26 August 1983

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On 22 April 1983 Administrative Law Judge William N. Cates issued the attached Supplemental Decision in this proceeding.¹ Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Supplemental Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,² and conclusions of the Administrative Law Judge, and to adopt his recommendation that Respondent's objections be overruled in their entirety.³

ORDER

It is hereby ordered that the Order issued by the Board in *Kusan Mfg. Co.*, 251 NLRB 1629 (1980), be, and it hereby is, affirmed.

¹ The Board's Decision and Order herein is reported at 251 NLRB 1629 (1980).

² Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

³ Member Hunter, in agreeing with the recommendation to overrule the objection predicated on the Union's polling, notes the absence of any evidence that the polling was coercive. Member Hunter adheres to the view that polling whether by a labor organization or by an employer is not *per se* coercive and grounds for setting aside an election. See, for example, *Struksnes Construction Co.*, 165 NLRB 1062 (1967).

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge: On September 4, 1980, the National Labor Relations Board, herein Board, issued its Decision and Order (251 NLRB 1629) in which it found that Kusan Manufacturing Company, a Division of Kusan, Inc., herein Respondent, had engaged in and was engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the National Labor Relations Act, as amended, herein called the Act, by refusing to bargain with District Lodge 155

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of the International Association of Machinists and Aerospace Workers, AFL-CIO, herein called the Union, which was certified on April 7, 1980, as the collective-bargaining representative of certain of Respondent's employees subsequent to an election held in Case 26-RC-6090. The election in Case 26-RC-6090 was conducted in a stipulated unit on October 19, 1979, pursuant to a Stipulation for Certification Upon Consent Election. The results of the Board-conducted election were 118 votes for, and 107 votes against, the Union, with 1 nondeterminative challenged ballot. On October 24, 1979, Respondent filed timely objections to conduct affecting the results of the election, alleging in substance that the Union improperly circulated a petition containing the signatures of union supporters and intimidated employees so that they would sign the petition. An investigation by the Regional Director for Region 26 of the Board was had, and he issued his Report on Objections on December 20, 1979, in which he recommended that Respondent's objections be overruled. Respondent subsequently filed exceptions to the report, and, as noted above, on April 7, 1980, the Board issued its Decision and Certification of Representative in which it adopted the Regional Director's findings and recommendations. Thereafter, Respondent petitioned the United States Court of Appeals for the Sixth Circuit for review of the Board's Decision in 251 NLRB 1629. The Board thereafter cross-petitioned for enforcement of its Order. On March 10, 1982, the court denied enforcement and remanded the case to the Board, holding that Respondent was entitled to a hearing on whether certain conduct allegedly engaged in by union supporters affected the outcome of the election in the underlying representation proceeding. *Kusan Mfg. Co. v. NLRB*, 673 F.2d 150 (6th Cir. 1982). On December 9, 1982, the Board remanded the proceeding to the Regional Director for Region 26 of the Board to arrange a hearing on Respondent's Objection 1 to conduct affecting the results of the election. The Board noted that the substance of Objections 2, 3, and 4 overlapped with that of Objection 1. The Board ordered that, in view of the substantive overlap, its Order should not be interpreted as excluding from the hearing that evidence which arose in connection with Objections 2, 3, and 4, insofar as such evidence is relevant to Objection 1.

A hearing was held before me in Nashville, Tennessee, on February 17, 1983. All parties were afforded full opportunity to participate, to call, to examine and cross-examine witnesses, and to present evidence. Following the close of the hearing, counsel for Respondent and the representative for the Charging Party filed briefs on the issues presented.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs, I make the following:

FINDINGS AND CONCLUSIONS

I. THE OBJECTIONS

I shall set forth Respondent's objections to conduct affecting the results of the election, Objections 1 through 4

(Resp. Exh. 8), inasmuch as the Board ordered that all evidence of an overlapping nature be considered notwithstanding the fact that Respondent filed exceptions with the Board only with respect to Objection 1.

Respondent's objections were:

1. The Petitioner, through its agents and members, interfered with the rights of voters and violated the secret ballot process by obtaining signatures on a petition indicating [sic] the voter's desires for representation by the Petition [sic] and by circulating and distributing copies of such petition to voters prior to the election.

2. The Petitioner, through its agents and members, interfered with the free choice of employees by coercing and intimidating such employees to make known their desires for union representation through their signature on a petition indicating their support for the Petitioner.

3. The Petitioner, through its agents and members, engaged in a pattern of intimidation and coercion of employees during the insulated period prior to the election which interfered with the laboratory conditions necessary to a fair election.

4. The Petitioner, through its agents and members, made several misrepresentations of fact to employees at a time when the employer could not effectively respond to such misrepresentations thereby interfering with the free choice of voters in the election.

II. THE PROUNION PETITION

Inasmuch as the testimony and other evidence in the instant case deals in one fashion or another with comments or actions related to or involved with the prounion petition, I shall set forth the heading to the petition in its entirety:

We the undersigned are voting *yes* for the IAM. We don't mind being on the firing line because we know it's something that has to be done. Please join with us! VOTE YES and help us to make Kusan, Inc. a better place to work and earn a living. [Resp. Exh. 1.]

Beneath the caption set forth above there appears a number of signatures, signed in various directions, some of which overlap other signatures, and it appears there are approximately 100 signatures on the petition.

III. POSITION OF THE PARTIES

Respondent contends that the solicitation of signatures for the petition and the distribution of the petition referred to above constituted a "poll" which improperly interfered with the results of the Board-conducted election. Respondent also contends that, even if the circulation and distribution of the prounion petition referred to above were not sufficient to require the direction of a new election, the use of threats and intimidation by supporters of the Union in obtaining signatures on the petition created an atmosphere of fear and coercion such as to require that the results of the election be set aside and

a new election directed. Respondent also contends that a new election should be ordered because of the delay between the time it objected to the conduct affecting the results of the election and time it was able to obtain a hearing on those objections. Respondent contends that the delay was prejudicial to it in that it was unable to locate and present even those witnesses who had originally given testimony in support of the objections. Respondent also contends that, because of the lapse in time, some of the employees who did testify had their memories dimmed by the passage of time.

The Union takes the position there is no proof that it was responsible for drafting, circulating, and/or distributing the so-called petition in question. The Union contends the petition is not a petition as such, but is rather "an affirmation or declaration of intent." The Union further contends no misconduct took place but, even if *arguendo* it did, the misconduct is not attributable to it. The Union also contends that, even if any misconduct took place, the character of the misconduct was not so aggravated as to create an atmosphere of fear and reprisal such as to require the setting aside of the Board-conducted election. Simply stated, the Union contends no misconduct took place, and if any misconduct is found to have taken place the Union was not responsible for it, and it was not of such a magnitude as to require setting the election aside.

Counsel for the General Counsel maintained a position of neutrality throughout the proceeding, and did not file a brief herein.

IV. THE FACTS

It is undisputed that the prounion petition, with the caption set forth above, was circulated among Respondent's employees at least a week prior to the October 19, 1979, Board-conducted election. It is likewise undisputed that some of the signatures on the petition were actually obtained at a union organizing meeting presided over by Union Organizer Tommy Maynard. It is likewise undisputed that Maynard made copies of the petition to be passed out to Respondent's employees. Maynard was aware that the prounion petition was given out to employees at Respondent's plantsite on the afternoon or evening before, and the morning of, the Board-conducted election. From the undisputed facts, it is clear that the Union was aware of the petition, reproduced the petition for distribution to Respondent's employees, made no attempt to stop the circulation or distribution of the prounion petition, and took advantage of whatever effect, if any, the prounion petition may have had on the outcome of the Board-conducted election.

Before I discuss the petition *per se*, I shall set forth the facts with respect to the circulation and distribution of the petition and related comments attributed to various of Respondent's employees, and make any necessary resolutions with respect to credibility.

Respondent called, among others, four witnesses who were employees of Respondent at the time of the union campaign that culminated in the Board-conducted election on October 19, 1979.

Employee Etta Jones testified she had been an employee of Respondent since 1969, and had worked the entire time in the assembly department. Jones testified that employees were being approached by both sides of the election trying to persuade them to vote for one side or the other. Jones stated: "They didn't approach me very much, though." Jones testified she never saw the prounion petition (Resp. Exh. 1) that was circulated at the plant. However, she was asked by employee Evelyn Beard whether she had signed the petition. Jones told Beard she had not signed the petition. Beard asked Jones why. Jones told Beard she did not think she had to give a reason for not signing the petition. Jones rather emphatically stated Beard did not threaten her in any manner regarding signing the petition. Jones asserts Beard told her on one occasion that, if she had it in for her (Jones), she could make it hard on her. Jones did not know if Beard made the comment to her before or after she asked her about the petition. Jones did not even know what year it was that Beard told her she could make it hard on her if she had it in for her. Jones claimed Beard made it harder on her by not bringing her parts when Beard was a material handler, and by rejecting her parts when she was an inspector. Jones stated that, after Beard became an inspector of parts, "Well, she'd reject everything I done. I never did do anything right after she got to be . . . an inspector. But before that, she was a material handler, and she wouldn't give me no parts, and she said I thought I was smart if I asked for parts."

Jones acknowledged on cross-examination that it was Beard's job as an inspector to reject parts that were not correct as they came down the assembly line. Jones stated one day Beard would reject her parts as she inspected them, and the next day she would not. Jones acknowledged that for the year or two that Beard was the inspector for the parts she worked on she had rejected parts. Jones also acknowledged that parts were rejected on a daily basis.

Respondent presented Betty Scales Ridley who testified that she had worked in the assembly department at the Respondent for approximately 4 years. Ridley testified she had seen the prounion petition (Resp. Exh. 1) circulated at the plant prior to the Board-conducted election. Ridley testified that employee Beverly Beard asked her twice to sign the petition. On the first occasion that Beard asked her to sign it she was walking in the assembly area of the plant when Beard came alongside her and told her if she did not sign that paper she was going to kick her "ass." Ridley told Beard that it might be one that she might have to kick. Ridley asserts Beard "chunked" her on the leg and left. Ridley testified she did not know, at that time, what piece of paper it was that Beard was talking about. Ridley stated that on the second occasion when Beard asked her to sign the paper she signed it. Ridley asserts she did not read the paper when she signed it, and did not know if it said anything at the top of the paper or not. According to Ridley, Beard did not explain the paper to her. Ridley testified that she voted in the Board-conducted election and that she voted her own convictions.

Ridley testified that sometime prior to the election, and she could not be sure of the date, she heard Beard make the exact same comment to fellow employee Etta Jones that she had made to her about kicking her "ass" if she did not sign the paper. Ridley stated she never heard Beard make the statement to any other employee.

With respect to the testimony of Jones and Ridley it is necessary to make a determination as to whether it should be credited inasmuch as employee Beard was not called as a witness. If the testimony is credited, a determination would have to be made as to whether the comments directed toward Jones and Ridley were coercive. Etta Jones did not know if the statement she attributed to employee Beard about the possibility of Beard making it hard on her came before or after Beard allegedly asked her to sign the prounion petition. Jones' testimony in this respect, even if credited, which I do not, would not establish any interference with the election process. Jones' testimony about things being made harder for her does not withstand close scrutiny. It seems that Jones perceived she had a problem with Beard and had had one for an extended period of time. Jones stated Beard would not bring her parts when Beard was a material handler, and would not pass parts that she had worked on when Beard was quality control inspector examining those parts. The reason I decline to place any reliance on this testimony of Jones is that I am persuaded that if there had been a real problem for Jones in either regard that management of Respondent would not have tolerated it, and would have corrected the problem had it been a real one between Jones and Beard, inasmuch as it would have affected production. I am persuaded there is no creditable testimony by Jones that would establish any interference with the conditions necessary for a fair and valid Board-conducted election.

I do not credit Ridley's testimony that Beard threatened to kick her "ass" if she did not sign the paper, even though Beard was not called to testify with respect to the alleged statement. Ridley's testimony that Beard made the same statement to employee Etta Jones was not corroborated by Jones. Ridley testified she very distinctly heard Beard make the statement to Jones. Jones on the other hand was emphatic that Beard never threatened her regarding the petition. After observing Ridley testify and weighing her testimony in the light of other record testimony, I am convinced that Ridley was not telling the truth when she testified Beard threatened to kick Jones and her "ass."

I, therefore, conclude that Respondent failed to establish by the testimony of Ridley that any threats were made or that any interference with the Board's election process occurred.

Respondent called Betty Fuller as a witness. Fuller testified she was employed in the finishing department at the time of the Union's campaign. Fuller stated she first saw the prounion petition (Resp. Exh. 1) at or about the time of the Board-conducted election. When asked if she had any incidents with any employees who were supporting the Union prior to seeing the prounion petition for the first time, Fuller responded "to be frankly honest with you, I can't even remember." At this point in her

testimony Margaret Blackmon's name was suggested to her, and Fuller then testified:

I remember Margaret Ann [Blackmon] making a statement—it wasn't just she that was there, it was others sitting there at the time—and she made the statement, they were talking about someone's car having had sugar put in the gas tank, and I don't remember exactly what was said, but it was something in the effect of, "You wouldn't want something like that to happen to your car, and have to walk home."

Fuller could not recall the context in which the statement came up. Fuller testified she believed that her daughter Loretta Lancaster was present as well as an employee whose first name was Carolyn, but she did not know her last name. A last name of Turman was suggested to Fuller, and she stated it could have been Carolyn Turman. After being shown her pretrial Board affidavit given on November 26, 1979, Fuller stated that she believed "the girl that had had sugar put in her gas tank, was against the union."

Fuller was asked if she recalled employee Blackmon making a statement regarding what would happen to those employees who did not join the Union. Fuller testified, "I don't remember if it was her [Blackmon] that made it, or who made it, but the statement was made to me, that the people that did not join the Union would lose their job if the Union got in." After again reviewing her pretrial Board affidavit, Fuller acknowledged that her affidavit indicated Blackmon had made the statement; however, Fuller was unable to recall, in her trial testimony, if Blackmon was the person who had said it. After still further review of her pretrial Board affidavit, Fuller testified that she remembered saying in the conversation just alluded to above that she had signed a union card but had since changed her mind. When asked if Blackmon made any comment to her about that, she stated she would have to read her affidavit. Fuller then testified: "That's when she made the statement I have here, that I wouldn't like to walk back to Murphreesboro [sic] because my car wouldn't run." Fuller testified she lived in Murfreesboro, Tennessee, which is approximately 30 miles from Respondent's plant.

Fuller stated that about the time of the Union's campaign and the attempts by employees to get the prounion petition signed she had 300 to 400 items that she had worked on rejected each day. Fuller asserted that prior to the prounion petition she only had 25 to 50 pieces rejected per day. The inspector who rejected the parts she had worked on was employee Carolyn. Fuller did not know Carolyn's last name. Fuller could not recall if the incidents involving rejected parts and the conversation with employee Blackmon about sugar in the gas tank took place before or after she had seen the prounion petition (Resp. Exh. 1).

Fuller testified she was asked by the same employee whom she knew as Carolyn, the quality control inspector, to sign the prounion petition. Fuller testified Carolyn asked her to sign the petition in the lunchroom in the presence of her daughter Loretta Lancaster, employee

Mildred Pulley, and one other person. Fuller testified she first stated she did not want to sign it but that Carolyn said, "Oh, come on." Fuller stated she then signed it by saying, "It doesn't mean anything if I do sign it." Fuller stated she signed the petition because she thought if she did they would leave her alone. Fuller stated Carolyn asked each of them to sign the petition, and Mildred Pulley signed it, but her daughter Loretta Lancaster stated she did not want to sign it.

Fuller at first stated she could not recall if the conversation regarding sugar being put in a gas tank and her having parts rejected influenced her signing the prounion petition; however, after again being shown her pretrial Board affidavit, she stated, "Well, I say here that it did, and at the time I suppose it did then, if I signed it."

Fuller acknowledged on cross-examination that one of the companies that Respondent supplied television cabinets to had been rejecting a number of them and sending them back to Respondent, and there had been a problem in that regard. Fuller testified that when she had to work extra to correct the rejected parts she had previously worked on she was paid overtime to perform the work. Fuller stated she complained to her supervisor, Larry Thomasson, about the parts she had worked on being rejected. Fuller also stated that Respondent brought in an individual from Nashville, and the individual, with her assistance, marked cabinets that had nothing wrong with them and sent them through inspection. Fuller asserted that all of the specifically marked cabinets were rejected by the local quality control inspector. Fuller stated on cross-examination, with respect to the comments about sugar in the gas tank, that it was supposed to have happened in some other department of the plant, but she did not know if it actually occurred. Fuller testified she had not experienced problems with her automobile before or after the statement was made that she attributed to Blackmon.

Fuller stated on cross-examination that neither the statements about sugar in the gas tank or the comments about having to walk back to Murfreesboro played any part in her deciding how to vote in the Board-conducted election because she had already made up her mind.

Respondent presented Odessa Harris as a witness. Harris worked for Respondent during the 1979 election, and continued her employment until approximately 3 months before the trial of the instant case. Harris testified she had been asked by Margaret Blackmon and Carolyn Turman to sign the prounion petition (Resp. Exh. 1). Harris testified she was asked daily and sometimes three or four times a day to sign it. When asked if she had actually signed the petition, Harris stated, "Maybe at one time I might have." Harris was asked to locate her signature on the petition and in attempting to do so testified as follows:

MS. HARRIS: This sheet [the prounion petition] is so messed up, I don't know whether I can find it or not.

JUDGE CATES: We will be off the record for just a moment, and you take a look and see if you can find your signature on there. If you can't, that's—

MS. HARRIS: It's a mess.

JUDGE CATES: Well, you just look through the mess, and see if you can find your signature, and if you can, we'll let you put an "x" by your name and put a circle around it so that I will know it later on.

MS. HARRIS: If you can see it, then go ahead and look at it.

JUDGE CATES: Well, I'd rather you find it. (Pause.)

MS. HARRIS: Oh, there it is (pointing).

JUDGE CATES: Would you put an "x" by your signature there?

MS. HARRIS: (Marking on R-1).

JUDGE CATES: And would [you] put a circle around that "x" now?

MS. HARRIS: (Marking on R-1).

JUDGE CATES: Now, you can leave that there in front of you.

MS. HARRIS: I found it.

RESPONDENT ATTORNEY MCNAMEE: Ms. Harris, where is your signature: Would you show me?

ATTORNEY MCNAMEE: May I approach the witness?

JUDGE CATES: Yes.

ATTORNEY MCNAMEE: Would you show me your signature?

MS. HARRIS: Right there (pointing).

ATTORNEY MCNAMEE: Is that your signature?

MS. HARRIS: It might be. That's been three years ago.

ATTORNEY MCNAMEE: Well, does that look like the way you sign your name?

MS. HARRIS: (Pause.)

JUDGE CATES: Would you recognize your own signature?

MS. HARRIS: It might have been my signature. I'll say that.

JUDGE CATES: Does it look like the way you sign your name on a letter, or a check, or anything like that?

MS. HARRIS: I don't think I write that good.

ATTORNEY MCNAMEE: Ms. Harris, your name appears on the petition at one other point, too, and—

JUDGE CATES: (Interposing) Well, I would ask you, if she can locate her name any other place. I wouldn't want you to tell her in advance that it does.

Point out to her, where you think her signature is, but don't tell her it's on there, because she may not think that's her signature.

MS. HARRIS: I know I signed it one time now.

ATTORNEY MCNAMEE: Okay.

ATTORNEY MCNAMEE: Is that your signature there, Ms. Harris (pointing)?

MS. HARRIS: Yeah, that looks more like mine, I guess.

JUDGE CATES: Why don't you put two "x's" beside of that one, with a circle around it.

MS. HARRIS: (Marking on R-1.) There you go.

JUDGE CATES: Now, do they both look like your signature?

MS. HARRIS: They look kind of different to me. Would you want me to sign it again to—

JUDGE CATES: No, not at this point.

MS. HARRIS: Oh, all right. Here, take your pen.

JUDGE CATES: Don't be concerned about it. He has pointed out one that you think is your signature, and then you have pointed out one that you think is your signature.

So, with that, Respondent's Counsel, you may continue to examine.

ATTORNEY MCNAMEE: Ms. Harris, I'll ask you again. Are both of those your signature?

MS. HARRIS: I'm not going to say that, because I don't know.

ATTORNEY MCNAMEE: Which one appears to be yours?

MS. HARRIS: That one at the top. I didn't even see that one, awhile ago, but I see it now.

ATTORNEY MCNAMEE: Does that look like the way you sign your name? Does that look like your handwriting?

MS. HARRIS: I'm going to say that maybe it is, yeah.

ATTORNEY MCNAMEE: Now, that's the one with two "x's" by it, is that correct?

MS. HARRIS: Oh. Yes, sir.

ATTORNEY MCNAMEE: The signature near the bottom of the page, the one that you found first—the one with one "x" by it?

MS. HARRIS: Yeah.

ATTORNEY MCNAMEE: Does that appear to be your signature?

MS. HARRIS: I'm not going to say, because I—I don't think so, but I'm not going to say that for sure.

ATTORNEY MCNAMEE: You don't think so, but you're not going to say.

MS. HARRIS: That's right.

ATTORNEY MCNAMEE: Do you recall signing this petition?

MS. HARRIS: I might have signed it once, yes.

ATTORNEY MCNAMEE: Do you recall signing it more than once?

MS. HARRIS: No.

ATTORNEY MCNAMEE: Did you sign it more than once?

MS. HARRIS: I don't think so, no.

Harris testified that Blackmon and Turman told her the following when they asked her to sign the petition:

Well, let's see—(pause)—They said that they would take—they probably wouldn't give us our raises at times, you know, at some of the times.

Is that what you wanted to answer?

* * * * *

Well, it was said several times that they wouldn't give us our raises, that they could change their mind, or whatever, and they could give us—you

know, if they didn't want to give us raises, they didn't have to, and stuff like that.

* * * * *

They said that they could give us more money, you know, if they had a union in, and they wouldn't take a—that if we wasn't in the union, that they could deduct the—what do you call it?—the fees, or whatever—what is that?

* * * * *

Well, I can't think of, you know—they would deduct it from my wages, in other words. The (snaps fingers)—what is that?—

Harris also testified that either Blackmon or Turman told her she probably would not be given the transfer she desired to the paint department if the Union did not get in at Respondent.

Harris stated on cross-examination that when Blackmon and Turman asked her to sign the petition they sometimes talked about the Union in the conversation while at other times they did not. Harris testified on cross-examination that Blackmon and Turman said the Union could help them get more money. She also testified that Blackmon and Turman talked about negotiating a contract with Respondent if the Union came in. On cross-examination Harris stated she asked management at Respondent about any pay raises and was told that the employees would get raises when it was time for them whether the Union came in or not. Harris also testified that management of Respondent told her that it would not make any difference with respect to her request to be transferred to the paint department whether the Union came in or not.

Harris testified she voted the way she desired in the Board-conducted election, notwithstanding anything that had been said to her about the Union.

Union Organizer Maynard testified he told Respondent's employees at union meetings which he held that they should not threaten or anger their fellow employees if they wanted to be successful in their organizing efforts.

Carolyn Turman was called as a witness by the Union, and she stated she was employed by Respondent in 1979 as a quality control inspector. Turman testified it was her job to inspect parts and pass on their acceptability based on her own judgment. She stated she had the option of either accepting or rejecting any specific part. Turman testified that, when a part or item was rejected, a rejection slip was prepared for the part which stated exactly why the item or part was being rejected. All rejection slips were turned over to a supervisor each afternoon. Turman testified sometimes she knew what particular employee had worked on a specific part that she was inspecting, while at other times she did not. Turman stated she had never, on any occasion, rejected a part because the employee that worked on it had been, or was, against the Union.

Turman testified she took an active part in the Union's organizing campaign. Turman testified she attended

union meetings, handbilled on behalf of the Union, and sought others to support the Union. Turman solicited signatures on the prounion petition (Resp. Exh. 1). Turman stated she never received any pay from the Union for any of the work she did to assist in the organizing campaign. Turman testified that Union Organizer Maynard told all of the employees helping in the union campaign to be courteous to their fellow employees and not make any of them unhappy.

Turman testified she asked several employees to sign union signature cards. She stated some signed while others refused. Turman testified she never threatened anyone with respect to her seeking to have them sign a union card. Turman testified she signed the prounion petition and asked others on one occasion to sign it during their lunchbreak. Turman testified she asked employees at two separate tables in the lunchroom to sign the prounion petition. Turman stated she mainly asked those to sign the petition that had already signed a union signature card. Turman testified she had one employee, Loretta Lancaster, who refused to sign the prounion petition. Lancaster told her she would wait and maybe sign it later. Turman told Lancaster that that would be okay. Turman testified she never threatened Lancaster in any manner when she asked her to sign the prounion petition.¹ Turman testified that, at the time she asked Lancaster to sign the prounion petition, Betty Fuller, Mildred Pulley, and Carolyn Ruth were present. Fuller signed the prounion petition at that time.² Turman testified that was the only occasion that she attempted to have employees sign the prounion petition. Turman testified she handbilled at the plant, and one of the items she utilized as a handbill was photocopies of the prounion petition (Resp. Exh. 1). Turman handbilled about a week before the election.

Turman testified she never at any time heard any rumor that sugar had been placed in any employee's gas tank, nor had she heard any threat that sugar would be placed in anyone's gas tank. Turman testified she never threatened any employees that if they did not sign a union card they would have to walk to Murfreesboro, Tennessee. Turman also testified that she never at any time threatened any employee and did not know of any other employee making any threat or threats against a fellow employee.

The Union called Margaret Blackmon as a witness, and she stated that in her 5 years of employment at Respondent she had worked as a material handler and as a quality control inspector. Blackmon testified she was aware of the Union's organizing campaign at Respondent. Blackmon signed the prounion petition (Resp. Exh. 1), but did not recall who asked her to sign it. Blackmon asserted that everyone was talking about the petition at the time she signed it, and she mentioned to the others

¹ Mildred Pulley testified she was present on the same occasion. Pulley stated Lancaster indicated she wanted to wait before signing the petition. Pulley also testified that she did not hear anyone make any threats. Pulley acknowledged, however, that she may not have heard everything that was said at the time. Pulley impressed me as a completely honest witness, and I credit her testimony.

² Pulley also testified that Fuller signed the petition without comment.

"Hey, let's all sign it . . . come on . . . let's be one of the gang."

Blackmon testified she never heard any rumor about sugar being put into anyone's gas tank. Blackmon stated she never heard any threats made, nor did she make any threats that if employees did not vote for the Union, their cars would be damaged and they would have to walk to Murfreesboro, Tennessee.

Blackmon testified regarding employee Odessa Harris' desire to be transferred to the paint department as follows:

I may have asked Odessa, I don't know for sure, but she was wanting in the Paint Department terribly bad, and I said, I said to her, I said, "Odessa, maybe if you sign it, maybe you will get to be a painter," but it's awfully funny that after she didn't wear the union t-shirt, she got to go in the Paint Room.

Blackmon testified that, when she worked as a quality control inspector, she never rejected any parts or items worked on by any employee based on whether the employee supported or opposed the Union in its organizing campaign. Blackmon corroborated the testimony of Turman that, when an inspector rejected any item or part, the inspector had to indicate why it was being rejected. Blackmon stated on some occasions she had re-inspected a part as many as six times.

I credit the testimony of Union Organizer Maynard that he told employees to be courteous to their fellow employees in their attempts to seek their support for the Union and not to threaten them. Blackmon and Turman corroborated Maynard's testimony in this respect. Blackmon and Turman impressed me that they were telling the truth. I credit their testimony that they never threatened any employee in any manner. I also credit their testimony that they never heard any rumors regarding sugar being placed in any employee's gas tank at any time. I am persuaded that Blackmon and Turman told the truth when they stated they never rejected any part or item that they inspected because the employee who worked on the part had been, or was suspected of being, against the Union. I am persuaded that Blackmon and Turman were telling the truth in this regard because they were required to prepare rejection slips on each item or part they rejected stating why it was being rejected. If there had been any unnecessary rejection of parts, I am persuaded that this would have been a matter that would have been corrected by management of Respondent and documentation of such unnecessary rejection of parts would have been available in this proceeding. I specifically credit Blackmon's testimony that she never threatened Betty Fuller or Odessa Harris. I, likewise, credit Blackmon's testimony that she never threatened anyone that they would have their cars damaged or that they would have to walk to Murfreesboro, Tennessee. In resolving credibility, I considered a number of factors that convinced me that Harris' testimony was unbelievable. Harris appeared very nervous and uncomfortable while testifying. She could not be certain as to her own signature on a petition. She also had a very difficult time remembering what she wanted to say. Harris was

also very uncertain of her testimony. For example, she stated, "I can't hardly remember what happened last week, much less 3 years ago." Harris appeared to me to be more at ease and somewhat more believable when she was answering questions on cross-examination; however, her overall testimony was too uncertain for me to place any reliance on it. I am also convinced that Fuller's testimony was likewise unreliable. Fuller could not remember very much at all about the events of 1979 without being constantly led in her testimony. Fuller had to make constant reference to her pretrial Board affidavit; however, even after referring to her pretrial Board affidavit, she seemed reluctant to reaffirm what was contained in her affidavit. The testimony that she gave was filled with uncertainties. For example, when she described one of the comments she attributed to employee Blackmon, she stated that Blackmon said, "something in the effect of." For the reasons noted above, I do not place any reliance on Fuller's testimony.

Based on the fact the Union gave specific instructions to employees helping it in its campaign not to make any threats to their fellow employees, and after considering all the other credited record testimony herein, I have decided to place no reliance on, or give any credence to, the pretrial Board affidavit of Loretta Lancaster (Jt. Exh. 1).

Therefore, based on the credited testimony outlined above, I find Respondent has failed to establish that any threats were made by any of the employees in their support of the Union and its efforts to organize the employees of Respondent. I, likewise, find, based on the record evidence herein, that there has been no showing of any coercive conduct on the part of anyone with respect to obtaining signatures on the prounion petition, or in the circulation or distribution of that petition. In summary, I find no conduct has been established by this record that would warrant setting the Board-conducted election aside. I shall, therefore, recommend that Respondent's Objection 1, and any parts of Objections 2, 3, and 4 that might be considered to overlap with Objection 1, be overruled in their entirety.

I reject the Respondent's contention that the prounion petition, itself, constituted an unlawful poll on the part of the Union. The Board held in *J. C. Penney Food Department*, 195 NLRB 921 (1972), that noncoercive preelection polling by a union, such as in the instant case, was lawful and did not constitute grounds on which to set aside a Board-conducted election. The Board further addressed the issue in *Glamorise Foundations*, 197 NLRB 729 (1972), where it held that a union engaged in organizing employees, such as in the instant case, may legitimately measure its support among the work force, while an employer may not do so. I, therefore, find Respondent's contention that the poll was unlawful to be without merit.

Finally, I reject Respondent's contention that a new election should be directed because it was prejudiced by the delay in time between its seeking a hearing on its objections and the date of the actual hearing. I am persuaded that the Board's handling of this case meets the required standards for procedural due process and funda-

mental fairness. As such, I am persuaded that Respondent was not prejudiced in its attempt to establish any objectionable conduct based on the time frame between its seeking a hearing on its objections and the actual hearing being held.

RECOMMENDATION³

It is recommended that Respondent's Objection 1 and any portions of Objections 2, 3, and 4 that overlap with Objection 1 be overruled in their entirety.

³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.